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Dated: May 30, 2007

Signature:

Lois A. Snure
Lois A. Snure

Docket No.: 2657-1-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Reijo Varis.

Application No.: 10/525,055

Art Unit: 3147

Filed: February 18, 12005

Examiner: Rakesh Kumar

For: DEVICE FOR DISPENSING TABLET-OR
CAPSULE-SHAPED MEDICAMENTS IN
DESIRED DOSES

MS Appeal Brief - Patents
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APPEAL BRIEF

As indicated in the Notice of Appeal filed on December 26, 2006, Appellants hereby appeal the final decision of the Examiner in the above-identified application rejecting the subject matter of the pending claims. For the reasons set forth in this brief, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's final rejection of the claimed subject matter. Applicants are filing this Appeal Brief within the time period for response, and therefore, no fees are believed to be due. However, if this is in error, authorization is hereby given to charge any fees to deposit account number 11-1153.

I. REAL PARTY IN INTEREST

The real party in interest in the above-identified application is Addoz Oy, a Finnish company of Viikinkaari 6, FIN-00710, Helsinki, Finland, the assignee of the application.

II. RELATED APPEALS AND INTERFERENCES

There are no applications, patents, appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-24 are pending in this application and are set forth in the Claims Appendix (Appendix A). All claims 1-24 have been rejected and are under this appeal.

IV. STATUS OF THE AMENDMENTS

A Notice of Appeal was filed December 26, 2006. All prior amendments have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1-24

Claim 1 is the only independent claim and claims 2-24 therefore depend from claim 1. Claim 1 is drawn to a device for dispensing tablet or capsule shaped medicaments in desired doses (see page 1 beginning at line 1). The device includes a collar-shaped cassette body (1), (see Fig. 1 and page 2 at line 7) that includes a central opening (2) (see Fig 1, page 2, line 7) surrounded by an open-top annular space which is divided by partitions (4) (see page 2, line 9) for dosage containers (3) (see page 2, line 9) and a cover (11) (see page 2, line 11) concealing the dosage containers, rotatable relative to the cassette body (see Fig. 1 and page 2 at line 7) and provided adjacent to its circular rim with a dispensing aperture (13) (see page 2, lines 15, 16) which is coincidable with any dosage container (3) by rotating the cover (11) (see page 2, lines 16, 17) (previously presented), the cover (11) further including a central recess (12) (see page 3, line 4) or a collar ring, which is fit to be embedded in the body's central opening (2) (see page 3, lines 4-6), and the body is provided with a knurling (6) (see

page 3, line 31), having a pitch which is matched to that of the dosage containers (3) (see page 3 line 31 to page 4, line 1) and the cover (11) is provided with pawls (16) (see page 4, line 3) set for cooperation with the knurling (6) (see page 4, line 3-4), which provide a retaining response against rotation of the cover (11) once the cover's aperture (13) is in coincidence with a given dosage container (30 (see page 4, line 3-6), characterized in that the recess (13) or collar ring of the cover (11) is provided with a window (14) (see page 4, lines 13-15), through which is visible a dispensing time for at least one dosage which is printed on a dispensing schedule placed in the body's central opening (2) (see page 4, lines 19-24) and that the pawls (16) are designed for allowing rotation of the cover (11) in either direction (see page 4, lines 23-24), and that said retaining response is more powerful in the cover's rotating direction backward in the dispensing schedule than in its rotating direction forward in the dispensing schedule (see page 4, lines 23-27)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellants present the following issue for review:

1. Whether claims 1, 5, 6 and 17 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al , U.S. Patent 5,984,122.
2. Whether claims 2, 9, 14 and 20 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al , U.S. Patent 5,984,122 as applied to claim 1 and further in view of Lambelet et al, U.S. Patent 5,555,597.
3. Whether claims 3, 7, 8, 10, 12, 15, 18, 21 and 23 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al , U.S. Patent 5,984,122 and further in view of Lambelet et al, U.S. Patent 5,555,597 as applied to claim 2, and further in view of McAllister et al, U.S. Patent 5,782,359.
4. Whether claims 4, 11, 13, 16, 19, 22 and 24 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al , U.S. Patent 5,984,122, in view of Lambelet et al, U.S. Patent 5,555,597 and further in view of McAllister et al as applied to claim 3, and further in view of Benaroya, U.S. Patent 4,572,403.

VII. ARGUMENTS

A. Summary of Examiner's Rejection of Claims 1, 5, 6 and 17 as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al U. S. Patent 5,984,122.

In the Final Office Action dated August 28, 2006, the Examiner rejected claims 1 and 6 on the contention that Garde et al discloses a tablet dispenser for consecutive administration of tablet in a desired dose, and has listed the various components i.e. a collar shaped cassette body including a central opening etc. The Examiner has referred to the claim language of claim 1 relating to the pawls being designed for allowing the rotation of the cover (22) and that "said retaining response is more powerful in the cover's rotating direction backward than in its rotating direction forward" by simply pointing to "(see shape of teeth members 32; figure 2)". That is followed by the statement "Garde does not specifically disclose a dispensing schedule placed in the body's central opening and does not disclose the cover to be able to rotate in either direction with respect to the position of the dispensing schedule".

The Examiner then resorts to the secondary reference of Barker et al to argue the obviousness of the dispensing schedule to be placed in the body's central opening underneath the cover to be visible through the indicator opening as taught by Barker "because it would allow a single type dispenser to use various types of removable and replaceable dispensing schedule indicia to be available for a particular dosage.

As to the ability to move the cover in both direction, the Examiner states "Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teaching of Garde and decrease the height and adjust the slope of the teeth (32; Figure 2; Garde) so as to allow the pawls to slip and allow the cover to rotate in either directions (forward and backward) with a different engaging strength required to rotate in the forward direction and as required to rotate in the backward direction, because it would allow a user to reverse to the correct dosage container without having to further rotate the cover completely around".

Claims 5 and 17 were rejected on the basis of Garde disclosing a tablet dispenser ... wherein the cover has an outer rim provided with a knurling for a finger grip which facilitates rotation of the cover.

A. Appellants' Response

Neither the Garde et al Nor the Barker et al Reference Discloses or Suggests the Ability To Move the Cover In Both Directions, That is The Forward and Reverse Directions, Far Less Having the Movement In The Reverse Direction Require More Power.

Appellants respectfully disagree with the Examiner's rejection. As an initial note, the feature of the cover being movable bi-directionally is conceded by the Examiner not to be found anywhere in the principle Garde reference, nor is that feature found in the secondary reference of Barker et al. Note, column 3, lines 11-21 and column 4, lines 18-31 of Garde where it is clear that Garde does not allow movement in the backward direction. Thus, the entire grounds for the rejection of claim 1 specifically reciting that feature is the Examiner's personal statement that it would be obvious ... to modify the teaching of Garde and decrease the height and adjust the slope of the teeth as to allow the pawl to slip and allow the cover to rotate in either direction The motivation for such a modification is apparently founded on the basis that it would allow a user to "reverse to the correct dosage container without having to further rotate the cover completely around". Thus, by that statement, the Examiner seems to be conceding that the feature is advantageous, that is, an improvement over the cited references and yet it is considered obvious to re-engineer that prior art to arrive at that feature. The Examiner therefore suggests how to carry out that re-engineering, however, even if one had the idea for the re-engineering for the reverse movement, where there is no such disclosure or suggestion, it is simply not and easy task to modify the teeth to allow the bi-directional movement, with the movement in the backward direction requiring more power than the movement in the forward direction.

Appellant submits that it went to considerable difficulty and time to engineer the device so as to be able to move not only in the backward direction but requiring more force for that backward movement than the forward movement and that it should be rewarded for

that engineering effort. Appellant also submits that not only is the feature advantageous for the reasons stated by the Examiner, but there are situations where it is more convenient to rotate the cover backwards one or a few compartments rather than rotate it a full rotation in the forward direction and, further, if the cover is inadvertently rotated too far, either during the filling or dispensing of the products, it is more convenient again to simply rotate it in the backward direction, albeit with more effort than moving the cover in the forward direction.

In effect, the Garde reference is being re-engineered without any suggestion to do so or any secondary reference that would suggest one to carry out the re-engineering. The only disclosure on the present record that teaches the advantageous feature of the bi-directional movement with a greater force needed to move the cover in the backward direction is Appellant's own specification.

B. Summary of Examiner's Rejection of Claims 2, 9, 14 and 20 as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al U. S. Patent 5,984,122 as applied to claim 1, and further in view of Lambelet et al, U.S. Patent 5,555,597.

The position of the Examiner with respect to claim 2 is that Garde discloses a tablet dispenser for consecutive administering of tablets but concedes that Garde does not disclose the pawls being disposed on the outer rim of the cover's recess and turns to Lambelet as disclosing pawls positioned on the outer rim of the circular platform to engage notches on the rotatable know. As to claim 9, the Examiner refers to his position with respect to claim 5. As to claims 14 and 20, the Examiner refers to his position with respect to claim 1.

B. Appellants' Response

Neither the Garde et al Nor the Barker et al Nor the Lambelet et al Reference Discloses or Suggests the Ability To Move the Cover In Both Directions, That is The Forward and Reverse Directions, Far Less Having the Movement In The Reverse Direction Require More Power.

Applicant simply reiterates its position with respect to claim 1, that is, none of the cited references shows or suggests the feature of independent claim 1 wherein the cover can move bi-directionally in the forward and backward direction with more force required to move the cover in the backward direction than in the forward direction. The addition of the Lambelet reference adds no further disclosure directed to that feature that is included in the limitations of dependent claims 2, 9, 14 and 20 by their dependency on claim 1. Applicant also disagrees that the three references can or would logically be combined by anyone skilled in this art.

C. Summary of Examiner's Rejection of Claims 3, 7, 8, 10, 12, 15, 18, 21 and 23 as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al U. S. Patent 5,984,122 and further in view of Lambelet et al, U.S. Patent 5,555,597 as applied to claim 2 and further in view of McAllister et al, U. S. Patent 5,782,359.

The position of the Examiner with respect to claims 3 and 7 is that McAllister discloses a child proof container wherein the body's top edge had its outer rim provided with a circular hem and the cover has its rim provided with inwardly directed lugs, the circular hem being provided, at a pitch complementary thereto, with discontinuities which, in just one rotary position of the cover, establish passages for the lugs which, by rotating the cover, are engageable behind the circular hem for retaining the cover in contact with the body in all other positions except said rotary position allowing a passage of the lugs. The Examiner contends that it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Garde in view of Barker and further in view of Lambelet to include a circular hem on the outer rim of the body and include a complementary lugs positioned on the rim of the cover directed inwardly to engage the circular hem in all positions except a rotary disengaging position where the cover can be removed from the dispenser body as taught by McAllister, As a result the cover can not accidentally be removed while rotating the next dosage except when the two members are aligned a single unitary position. As to claims 10 and 12, the Examiner refers to his position with respect to claim 5. As to claims 15, 18, 21 and 22, the Examiner refers to his position with respect to claim 1. As to claim 8, the Examiner refers to his position with respect to claim 4.

C. Appellants' Response

Neither the Garde et al Nor the Barker et al Nor the Lambelet et al Nor The McAllister Reference Discloses or Suggests the Ability To Move the Cover In Both Directions, That is The Forward and Reverse Directions, Far Less Having the Movement In The Reverse Direction Require More Power.

Applicant simply reiterates its position with respect to claim 1, that is, none of the cited references shows or suggests the feature of independent claim 1 wherein the cover can move bi-directionally in the forward and backward direction with more force required to move the cover in the backward direction than in the forward direction. The addition of the McAllister reference adds no further disclosure directed to that feature that is included in the limitations of dependent claims 3, 7, 8, 10, 12, 15, 18, 21 and 23 by their dependency on claim 1. Applicant also disagrees that the four references can or would logically be combined by anyone skilled in this art.

D. Summary of Examiner's Rejection of Claims 4, 11, 13, 16, 22 and 24 as being unpatentable over Garde et al, U.S. Patent 6,325,241 in view of Barker et al U. S. Patent 5,984,122 and further in view of Lambelet et al, U.S. Patent 5,555,597 and further in view of McAllister et al, U. S. Patent 5,782,359 as applied to claim 3, and further in view of Benaroya, U.S. Patent 4,572,403.

The position of the Examiner with respect to claim 4 is that Benaroya discloses a tablet dispensing device wherein between the first and last dosage containers lies a solid-top which occupies a space matching the dosage containers pitch and the cover's dispensing aperture falls alongside the closed compartment. The Examiner concedes that Benaroya does not disclose the compartment with solid top having an open-bottom nor does Benaroya disclose that in the rotary position, which aligns with the solid top, allows a passage of lugs formed on the rim of the cover. The Examiner thus contends that it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Garde in view of Barker, in view of Lambelet and further in view of McAllister to position a passage for the lugs (Garde) of the cover alongside the closed compartment as taught by Benaroya because it

would allow the user to remove the cover of the dispenser to refill as the last dosage is consumed from the dispenser. The Examiner further considered it would be obvious to one of ordinary skill in the art at the time the invention was made to have used a closed compartment that contained an open bottom because it would reduce material cost and the weight of the dispenser. As to claims 11 and 13, the Examiner refers to his position with respect to claim 5. As to claims 16 and 22, the Examiner refers to his position with respect to claim 1. As to claims 19 and 24, the Examiner refers to his position with respect to claims 8 and 1.

D. Appellants' Response

Neither the Garde et al Nor the Barker et al Nor the Lambelet et al Nor the McAllister Nor the Benaroya Reference Discloses or Suggests the Ability To Move the Cover In Both Directions, That is The Forward and Reverse Directions, Far Less Having the Movement In The Reverse Direction Require More Power.

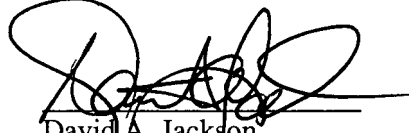
Applicant simply reiterates its position with respect to claim 1, that is, none of the cited references shows or suggests the feature of independent claim 1 wherein the cover can move bi-directionally in the forward and backward direction with more force required to move the cover in the backward direction than in the forward direction. The addition of the Benaroya reference adds no further disclosure directed to that feature that is included in the limitations of dependent claims 4, 11, 13, 16, 19, 22 and 24 by their dependency on claim 1. Applicant also disagrees that the five references can or would logically be combined by anyone skilled in this art. Appellant also disagrees with the same conclusory statement to the effect that a feature, not found in the prior art would be obvious based on that feature being advantageous. Applicant submits that exactly the opposite is true, that is, if the feature is not disclosed in the prior art, and it is advantageous over that cited prior art, it should be patentable.

VIII. CONCLUSION

Appellants submit that claims 1-24 are both novel and unobvious over the references cited in the present application and respectfully request that the Board reverse the rejection of claims 1-24 for the reasons set forth above.

Dated: 5/30/07

Respectfully submitted,



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CLAIMS APPENDIX A

1. (original) A device for dispensing tablet- or capsule-shaped medicaments in desired doses, the device comprising a collar-shaped cassette body (1), including a central opening (2) surrounded by an open-top annular space which is divided by partitions (4) for dosage containers (3), and a cover (11), concealing the dosage containers, rotatable relative to the cassette body (1), and provided adjacent to its circular rim with a dispensing aperture (13) which is coincidable with any dosage container (3) by rotating the cover (11), the cover (11) further including a central recess (12) or a collar ring, which is fit to be embedded in the body's central opening (2), and the body is provided with a knurling (6), having a pitch which is matched to that of the dosage containers (3), and the cover (11) is provided with pawls (16) set for cooperation with the knurling (6), which provide a retaining response against rotation of the cover (11) once the cover's aperture (13) is in coincidence with a given dosage container (3), characterized in that the recess (12) or the collar ring of the cover (11) is provided with a window (14), through which is visible a dispensing time for at least one dose which is printed on a dispensing schedule placed in the body's central opening (2), and that the pawls (16) are designed for allowing rotation of the cover (11) in either direction, and that said retaining response is more powerful in the cover's rotating direction backward in the dispensing schedule than in its rotating direction forward in the dispensing schedule.
2. (previously presented) A device as set forth in claim 1, wherein the knurling (6) is located on the circular rim of the central opening (2) and the pawls (16) comprise flexible tabs present on the outer rim of the cover's recess (12) or collar ring.
3. (previously presented) A device as set forth in claim 1 wherein the body's top edge has its outer rim provided with a circular hem (8) and the cover (11) has its rim provided with inwardly directed lugs (18), the circular hem (8) being provided, at a pitch complementary thereto, with discontinuities (9) which, in just one rotary position of the cover (11), establish passages for the lugs (18) which, by rotating the cover (11), are engageable behind the circular hem (8) for retaining the cover (11) in contact with the body (1) in all other positions except said rotary position allowing a passage of the lugs (18).

4. (previously presented) A device as set forth in claim 3, wherein between the first and last dosage containers (3) lies a solid-top and open-bottom compartment (10, 10a), which occupies a space matching the dosage containers' pitch, and that, in the rotary position allowing a passage of the lugs (18), the cover's dispensing aperture falls alongside the closed compartment (10, 10a).
5. (previously presented) A device as set forth in claim 1 wherein the cover has its outer rim provided with a knurling (17) for a finger grip which facilitates rotation of the cover.
6. (previously presented) A device as set forth in claim 1 wherein the dispensing schedule (2) is removable and replaceable.
7. (previously presented) A device as set forth in claim 2 wherein the body's top edge has its outer rim provided with a circular hem (8) and the cover (11) has its rim provided with inwardly directed lugs (18), the circular hem (8) being provided, at a pitch complementary thereto, with discontinuities (9) which, in just one rotary position of the cover (11), establish passages for the lugs (18) which, by rotating the cover (11), are engageable behind the circular hem (8) for retaining the cover (11) in contact with the body (1) in all other positions except said rotary position allowing a passage of the lugs (18).
8. (previously presented) A device as set forth in claim 7, wherein between the first and last dosage containers (3) lies a solid-top and open-bottom compartment (10, 10a), which occupies a space matching the dosage containers' pitch, and that, in the rotary position allowing a passage of the lugs (18), the cover's dispensing aperture falls alongside the closed compartment (10, 10a).
9. (previously presented) A device as set forth in claim 2 wherein the cover has its outer rim provided with a knurling (17) for a finger grip which facilitates rotation of the cover.
10. (previously presented) A device as set forth in claim 3 wherein the cover has its outer rim provided with a knurling (17) for a finger grip which facilitates rotation of the cover.

11. (previously presented) A device as set forth in claim 4 wherein the cover has its outer rim provided with a knurling (17) for a finger grip which facilitates rotation of the cover.
12. (previously presented) A device as set forth in claim 7 wherein the cover has its outer rim provided with a knurling (17) for a finger grip which facilitates rotation of the cover.
13. (previously presented) A device as set forth in claim 8 wherein the cover has its outer rim provided with a knurling (17) for a finger grip which facilitates rotation of the cover.
14. (previously presented) A device as set forth in claim 2 wherein the dispensing schedule (2) is removable and replaceable.
15. (previously presented) A device as set forth in claim 3 wherein the dispensing schedule (2) is removable and replaceable.
16. (previously presented) A device as set forth in claim 4 wherein the dispensing schedule (2) is removable and replaceable.
17. (previously presented) A device as set forth in claim 5 wherein the dispensing schedule (2) is removable and replaceable.
18. (previously presented) A device as set forth in claim 7 wherein the dispensing schedule (2) is removable and replaceable.
19. (previously presented) A device as set forth in claim 8 wherein the dispensing schedule (2) is removable and replaceable.
20. (previously presented) A device as set forth in claim 9 wherein the dispensing schedule (2) is removable and replaceable.
21. (previously presented) A device as set forth in claim 10 wherein the dispensing schedule (2) is removable and replaceable.

22. (previously presented) A device as set forth in claim 11 wherein the dispensing schedule (2) is removable and replaceable.

23. (previously presented) A device as set forth in claim 12 wherein the dispensing schedule (2) is removable and replaceable.

24. (previously presented) A device as set forth in claim 13 wherein the dispensing schedule (2) is removable and replaceable.

APPENDIX B

1. Copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or any other evidence entered by the examiner and relied upon by the appellant in this appeal, along with a statement setting forth where in the record that evidence was entered by the examiner.

NONE

2. Copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interference section of this brief.

NONE